IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6150 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAJIRHUSSAIN USMANBHAI SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HN SOMPURA, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 19-5-2000 passed by the Police Commissioiner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the order of detention has been passed based on the two offences registered against him under the Prohibition Act. He has submitted that statements of two independent witnesses whose identity has not been disclosed has been recorded on 17-5-2000 and same has been verified on 18-5-2000 and order of detention has been passed on 19-5-2000. The learned advocate for the petitioner has restricted his argument on the point that he has made a representation to the Home Minister, State of Gujarat on 25-5-2000 through advocate by R.P.A.D. demanding copies of the statements of the raiding party and though it has been received by the authority on 26-5-2000, it has been decided on 1-6-2000. He has produced copy of the communication which has been received by the detenu on 10-6-2000 through jail authority and same is ordered to be taken on record. He has further submitted that said communication shows that Superintendent of Jail, Porbandar has received the same on 10-6-2000 bearing inward No.1808. He has submitted that the documents which have been demanded by the petitioner has not been supplied by the detaining authority and therefore, it affects the rights of the petitioner in making a fair representation. Even no affidavit has been filed either by the State authority or by the detaining authority. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed either by the detaining authority or by the State authority and also since no explanation has been putforth by the said authority for not supplying the documents which have been demanded by the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 19-5-2000 passed against the detenu is hereby quashed. The detenu-Najirhussain Usmanbhai Sindhi is set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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